Supreme Court, U.S.
FILED
DEC 22 1998
OFFICE OF THE CLERK

No. 98-830

IN THE
Supreme Court of the United States
October Term, 1998

Amoco Production Company,
on behalf of itself and the class it represents,

Petitioners,

v.

Southern Ute Indian Tribe,

Respondent.

BRIEF OF AMICUS CURIAE CAMPBELL COUNTY, WYOMING IN SUPPORT OF PETITIONERS' REQUEST FOR CERTIORARI

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INTRODUCTION

Campbell County, Wyoming, a governmental entity, by and through the undersigned Counsel files this amicus curiae brief in support of the defendant class' petition for certiorari filed by Amoco Production Company.[1] The Tenth Circuit's holding in *Southern Ute Indian Tribe v. Amoco Production Company*, 151 F.3d 1251 (10th Cir. 1998), is of grave concern to Campbell County, Wyoming because it changes ownership rights in approximately 400,000 acres of land in the county which are owned by residents of our county. The decision will ultimately have a devastating economic impact on our institutions and on us as individuals. Campbell County, Wyoming therefore respectfully requests that the United States Supreme Court grant certiorari in the above-captioned case.

INTEREST OF AMICUS CURIAE

Campbell County Wyoming is located in the center of the Powder River Basin in northeastern Wyoming and borders Montana. Gillette is the county seat and largest town in the county. Mineral development has been, and is, of vital importance to Campbell County. According to the BLM records there are approximately 400,000 acres in Campbell County patented under the 1909 and 1910 acts and approximately 1.4 million acres in Campbell, Sheridan and Johnson Counties.[2] Campbell County is located in the coal and petroleum rich Powder River Basin. A large portion of

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[1] Campbell County, Wyoming is a county and files this brief pursuant to Rule 37.4 of the Rules of the Supreme Court of the United States. None of the parties authored this brief. The brief was authored by counsel of record.

[2] Information obtained from the Buffalo, Wyoming Resource Office of the BLM.

the economic activity in Campbell County involves natural resources development. Because the Powder River Basin in Campbell County is a mature basin for oil exploration, coalbed methane exploration and development is vital to the future of the local economy.

SUMMARY OF THE ARGUMENT

Campbell County, Wyoming and its residents will suffer economic impact if the Tenth Circuit decision is not reversed. Without the Supreme Court hearing the case, some residents of Campbell County, Wyoming who live on the Wyoming/Montana border will be treated differently for parcels of land patented under the same acts. The discovery and development of coalbed methane was undertaken with the understanding that coalbed methane belonged to the patentee and that development should be honored. Any protection offered by S. 2500, Public Law 105-367, 112 Stat 3313 (1998) will be short-lived upon the expiration of contracts and leases existing as of October 21, 1998. Consequently, Campbell County requests that the Supreme Court of the United States grant certiorari for this case.

ARGUMENT

I. *MINERAL OWNERS AND OIL AND GAS EXPLORATION COMPANIES HAVE RELIED UPON THE HISTORICAL TREATMENT THAT COALBED METHANE WAS GAS AND THEREFORE WAS INCLUDED IN THE GRANT TO THE PATENTEES.*

Campbell County's coalbed gas resources are enormous. Over the last six years, coalbed gas leasing, exploration, drilling, and production in Campbell County has

grown from virtually nothing into a major economic activity. The activity has been undertaken under the belief that coalbed methane gas belonged to the patentee or its successors under the 1909 and 1910 acts.[3] Coalbed methane development is the most active exploration activity currently underway in Campbell County. For example, between July 1996 and June 1997 (the month prior to the three judge panel decision in the 10th Circuit.)[4], 672 applications for permits to drill coalbed gas wells were filed for drilling on federal, private, and state lands in Campbell County.[5] During this same period, Campbell County ranked as the top county in the Rocky Mountain Region for coalbed gas permitting and drilling activities.

Approximately 400,000 acres of land in Campbell County were patented under the 1909 and 1910 Acts construed by the court in the 10th Circuit decision. Obviously, many landowners in Campbell County are successors-in-interest to original patentees under the Acts. These are ordinary people and make up a diverse group -- ranchers, working people, public employees, large landowners, small landowners, widows, and retired people. Because Congress reserved only the solid mineral coal under the 1909 and 1910 Acts and conveyed all other minerals to the patentees, Campbell County landowners who own lands patented under the 1909 and 1910 Acts own the oil and gas in their lands.

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[3] Act of March 3, 1909, 35 Stat. 844 (30 U.S.C. § 81) ("the 1909 Act"); Act of June 22, 1910, 36 Stat. 583 (30 U..S. C. § 85) ("The 1910 Act"), (collectively known as the "Acts).

[4] Southern Ute Indian Tribe v. Amoco Production Co., 119 F.3d 816 (10th Cir. 1997).

[5] See Wyoming Oil and Gas Conservation Commission Website - http//wogcc.state.wy.us.

From the beginning of the coalbed gas exploration and development boom in Campbell County, everyone -- petroleum companies, mineral owners, landowners, coal mining companies, and the state and federal governments -- has treated coalbed gas as owned by the oil and gas estate owner. The original development of coalbed methane occurred because of oil and gas leases from mineral owners who received their interest under the 1909 and 1910 acts. The entire coalbed gas industry rests on the basic foundation that coalbed methane is a part of the oil and gas estate and naturally passed on to the patentees. Consequently, the growth of the coalbed gas industry has greatly affected and impacted Campbell County mineral owners who own the oil and gas estate in their lands, including those who own some of the 400,000 acres patented under the 1909 and 1910 Acts.

II. *THE DECISION WILL HAVE SEVERE ADVERSE IMPACT ON CAMPBELL COUNTY TAX REVENUE.*

The adverse impact on the tax revenues of Campbell County because of the decision is enormous.

Mineral owners execute oil and gas leases to exploration companies, granting the right to explore for oil and gas to the exploration companies. The mineral owner reserves a portion of the revenue free of cost in exchange for the right to explore for oil or the minerals. The amount reserved by the mineral owner is commonly referred to as the royalty interest. If the minerals are owned by the patentee or its successors, the royalty is paid to the fee mineral owners. If the mineral rights are owned by the United States, the federal government receives the royalty payment.

Campbell County receives an ad valorem (property tax) revenue in the amount of 5.97% of the value of production on royalty paid to fee mineral owners.[6] Campbell County does not receive tax revenue for Ad Valorem Tax on royalties paid to the United States because the local government entity cannot tax federal property. The difference in revenue to Campbell County because of lost tax revenue on royalty payments that will be made if the rights remain with the patentees compared to the tax revenue if the royalty payments are made to the United States under the decision is significant to the tax revenues of the County. Assuming 50% of the acreage subject to the 1909 and 1910 Acts is productive, and assuming that 50% of the productive acreage is unleased, there are 100,000 acres still subject to the Southern Ute Indian decision in Campbell County alone. (400,000 x .5 = 200,000; 200,000 x .5 = 100,000). Currently one well is being drilled on each 40 acre tract in Campbell County, Wyoming. Therefore there are 2,500 potential drill sites on unleased acreage. The average daily production rate of a CBM well in the Powder River Basin on every 40 acre tract is 200 mcf (200 thousand cubic feet) per well per day.[7] Based upon a cursory examination of the records in the Campbell County Clerk and Recorders Office, the average royalty reserved on leases from fee mineral owners is 15% of the value of the production. The average price for coalbed methane for 1998 has been $1.80/mcf. Therefore, the Southern Ute decision will cost Campbell County tax revenue of $2,941,717/year [(200/mcf/day x $1.80

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[6] See portions of the 1998 Wyoming Property Taxation prepared by the Wyoming Taxpayers Association logged with the Clerk of the United States Supreme Court .

[7] See Wyoming Oil and Gas Conservation Commission Website - http//wogcc.state.wy.us.

(price/mcf) x .15 (royalty rate) x .0597 (tax rate) x 365 (days per year) x 2500 (number of wells)].[8]

With current oil prices and coal prices falling, production of coalbed methane is necessary to maintain Campbell County tax revenues. Currently 18.22% of Campbell County's tax revenue is from ad valorem taxes on oil and 58.06% of the tax revenue is from ad valorem tax on coal production. The value of these commodities is decreasing and consequently the tax revenues to the County are decreasing. The valuation on coal decreased $61,464,820 or 6.5% from 1997 to 1998 and the valuation of oil decreased $48,333,619 or 15% from 1997 to 1998. Valuations are based on prior year prices. With current prices declining, next year's valuations will be even lower for oil and coal. In the same time frame, natural gas valuation rose from $29,135,435 in 1997 to $42,761,158 in 1998, an increase of $13,625,723 or 46.7%.[9] Virtually all of this increase in natural gas valuations is because of new coalbed methane production. Increased tax revenue from coalbed methane development is critical to Campbell County government functions.

In addition to the tax revenue to the Campbell County treasury, the impact of coalbed methane is significant to the

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[8] Using the same formula for the approximate 1.4 million acres subject to the decision in Campbell, Sheridan and Johnson County. The decision will cost the counties a total of $10,347,750 in lost tax revenue [1,400,000 x 5 = 700,000; 700,000 x .5 = 350,000. 350,000 ÷ 40 = 8,750 wells, 200 mcf/day x $1.80 x .15 x .06 x 365 x 8,750 = $10,347,750].

[9] See portions of the 1997 and 1998 Wyoming Property Taxation prepared by the Wyoming Taxpayers Association logged with the Clerk of the United States Supreme Court.

residents of Campbell County. The fee mineral owners are receiving royalty checks. Those revenues will be spent in the county. If the revenue goes to the federal government, local citizens will not spend it in the local economy.

III. *THE 10TH CIRCUIT DECISION HAS SIGNIFICANT IMPACT ON THE RESIDENTS OF CAMPBELL COUNTY WYOMING*

The decision is of extraordinary concern to the county because the Tenth Circuit changed ownership rights in coalbed methane gas in 400,000 acres of land in our county. The Tenth Circuit ruled that coalbed gas "was reserved to the United States" when Congress reserved "coal" under the 1909 and 1910 Acts. This ruling is not confined to the coal owned by the Southern Ute Indian Tribe; followed to its logical conclusion, the decision affects the ownership of coalbed gas in 16 million acres of land patented under the 1909 and 1910 Acts across the West.[10] According to the decision, mineral owners who own the oil and gas in lands as successors-in-interest under the 1909 and 1910 Acts do not own the coalbed gas.

For over eighty years, the patentees and their successors have conducted business believing gas was gas and not included as part of the coal. The mineral owners who were fortunate enough to have obtained production or executed leases, prior to October 21, 1998, have some relief. However, for those who do not have production, but have executed a lease, the protection expires when the lease expires under the current state of the law.

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[10] U.S. Dept. of Interior, Bureau of Land Management, Public Land Statistics, 1993, p. 16.

If the Supreme Court fails to hear the case, the residents of Campbell County will be stunned by the taking of their mineral interests by the Federal Government.

IV. *RECENT LAW DOES NOT SOLVE THE PROBLEM, AND INCONSISTENT TREATMENT BETWEEN MONTANA AND WYOMING IS FUNDAMENTALLY UNFAIR TO MINERAL OWNERS WHEN THE GEOLOGY IS THE SAME.*

Current economic activity on coalbed methane was initiated by companies obtaining leases from fee mineral owners, and developing it under the long-standing belief that gas was gas and belonged to the patentee. Although those efforts are protected by S. 2500 Pub. L. No. 105-367, 112 Stat. 3313 (1998), the efforts will be short-lived if the Supreme Court does not hear this case and ultimately reverse the decision of the Tenth Circuit. Businesses that have been developed on the belief that the patentee owns the coalbed methane will cease to exist. Ranchers who are dependent upon coalbed methane revenue in a down-agricultural market may be forced to liquidate. In general, a vital component to the future economy of Campbell County predicated upon the understanding that the patentee in 1909 and 1910 patents owned the gas. It is critical for the residents of Campbell County to have final resolution of this case with uniformity. It is fundamentally unfair for the Supreme Court not to hear the case.

Many ranchers in the northern part of Campbell County also own mineral rights in Montana that were patented under the 1909 and 1910 act. Because Montana is in the Ninth Circuit, and Wyoming is in the Tenth Circuit, the property rights will be treated differently even though the

chain of title is the same. It is illogical and inconsistent for the same owner to be treated differently on land just north of the Wyoming-Montana border than on land in Wyoming, which is part of the Tenth Circuit. In addition to the inconsistent treatment of the patentees, the confusing law will be difficult for the Department of the Interior to manage lands that are scientifically the same, but jurisdictionally different.

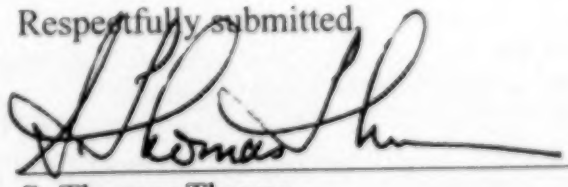
The Supreme Court should ultimately resolve the issue and resolve it in favor of the patentee.

CONCLUSION

We respectfully suggest that the issue of whether Congress retained coalbed gas when it reserved "coal" under the 1909 and 1910 Acts is of significant national importance and to Campbell County, Wyoming.

Dated: December 18, 1998.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of December, 1998, a copy of the foregoing **BRIEF OF AMICUS CURIAE CAMPBELL COUNTY, WYOMING IN SUPPORT OF PETITIONERS' REQUEST FOR CERTIORARI** was served upon the following parties by placing a correct copy in the United States Mail, first class postage prepaid, addressed to:

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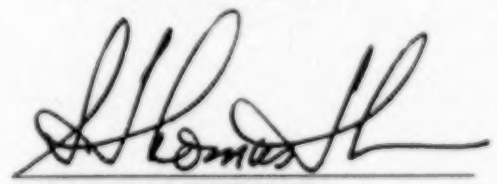
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